

Glaringly absent from either of these discussions is any clear statement about the obligations of private carriers, *i.e.*, carriers that provide telecommunications to a discrete group of customers for a fee. Ad Hoc submits that both language and legislative history of the 1996 Act make it clear that Congress did not intend private carriers to contribute to universal service support, except to the extent that they also provide telecommunications services on a common carrier basis. A comparison of Sections 153(43) and 153(46) of the Act reveals that the difference between “telecommunications” and “telecommunications service” is that the latter requires an offering of telecommunications to the public (or to a class of users effectively analogous to offering the services directly to the public) for a fee, while the former does not involve an offering to the public for a fee.⁴⁷ Thus, a private carrier would be a provider of telecommunications, while a common carrier would be a provider of telecommunications service. And while Section 254(d) *requires* “every carrier that provides interstate telecommunications services” to contribute to universal service, that section *permits* the Commission to require “any other provider of interstate telecommunications” to contribute, if the public interest requires. Similarly, in the Joint Statement of Managers, the sponsors of the 1996 Act observed that an entity can offer telecommunications on a private basis without incurring obligations as a common carrier.⁴⁸

⁴⁷ The Joint Board has acknowledged this distinction. Recommended Decision at ¶ 792 & n. 2539.

⁴⁸ Joint Statement of Managers (cited in Recommended Decision at ¶ 792).

The Commission should clarify, moreover, that it does not intend to depart from the common law of common carriage. Private carriers have always served niches in the market. Their small presence neither burdens universal service support nor would benefit from such support. Accordingly, private carriers should not be required to contribute to universal service support as a result of their private carrier operations.

Inasmuch as the Joint Board recommended that providers of telecommunications should *not* be required to contribute to universal service, Ad Hoc endorses this recommendation and urges the Commission to adopt it. At the same time, the Commission should clarify that “providers of telecommunications” includes private carriers. Such a statement would be consistent with both the letter and the spirit of the 1996 Act.

B. The Commission Should Clarify That Participation In Sharing Arrangements Does Not Obligate The Parties To Such Arrangements To Make Universal Service Contributions.

The Joint Board recommends that providers of “interstate telecommunications services” need not earn a profit to satisfy the 1996 Act’s definitional requirement that they be providing services “*for a fee*.”⁴⁹ The Joint Board therefore includes non-profit entities among the ranks of potential mandated contributors.⁵⁰ The Commission should clarify, however, that not every party that provides telecommunications services “for a fee” (even if they do

⁴⁹ Recommended Decision at ¶ 784.

⁵⁰ *Id.* at ¶ 789.

not earn a profit) will be required to contribute to universal service support.

Specifically, the Commission should clarify that participation in *bona fide* sharing arrangements, alone, does not obligate the participant to make universal service support payments.

The Commission has traditionally distinguished between resale and sharing arrangements. The Commission defines "sharing" as

a non-profit arrangement in which several users, perhaps having no community interest other than to communicate between the same two geographic points or to communicate with each other, collectively use communications services and facilities obtained from an underlying carrier or a resale carrier, with each user paying the communications-related costs associated with subscription to and collective use of the communications services and facilities according to its pro rata usage of such communications services and facilities.^[51]

Under this type of arrangement, entities share facilities and services, with each participant paying its own costs. The primary owner of the facility may pass through the costs of the facilities attributed to other parties sharing the facilities, and perhaps a third-party management fee. But in a *bona fide* sharing arrangement, no participant provides communications service to any other participant for a fee. There is no profit.

Moreover, participants to sharing arrangements are *users* of the service, not service *providers*. Thus, the Joint Board's recommendation that "any entity that *provides* any of the listed interstate telecommunications services on a *wholesale, resale or retail basis*" should be required "to contribute to support

⁵¹ *Resale and Shared Use Policies (Report and Order)*, 60 F.C.C.2d 261, 274 (1976).

mechanisms to the extent that it *provides* interstate telecommunications services," is consistent with the Commission's traditional regulation of sharing arrangements.⁵² Nevertheless, the Commission should clarify that universal service support requirements apply *only* to carriers that provide services on a wholesale, resale or retail basis, and that entities that merely participate in *bona fide* sharing arrangements are exempt from those requirements because they are not carriers or providers of telecommunications services for a fee.

IV. ADOPTION OF A FLAT-RATE CARRIER COMMON LINE CHARGE, WHILE AN IMPROVEMENT OVER THE EXISTING USAGE-SENSITIVE CCLC, IS VASTLY INFERIOR TO INCREASING THE SUBSCRIBER LINE CHARGE

The Joint Board's recommendation of a flat-rate Carrier Common Line Charge ("CCLC") is a marked improvement over the existing usage-sensitive CCLC. As set forth below, however, eliminating the CCLC and shifting revenue responsibility to the Subscriber Line Charge ("SLC"), if needed to cover forward-looking costs, is a superior solution for recovery of forward-looking loop costs.

A. Increasing The Subscriber Line Charge Is Consistent With The Joint Board's Finding That Flat-Rated End User Charges Are The Most Efficient Means Of Recovering Non-Traffic Sensitive Loop Costs.

The Joint Board proposes that the CCLC be recovered based on a flat-rate per-line charge, not as a usage-sensitive charge. Acknowledging a wide consensus among commenters (including Ad Hoc),⁵³ the Joint Board appropriately

⁵² Recommended Decision at ¶ 789 (emphasis added).

⁵³ Ad Hoc Comments at 22-24; Ad Hoc Reply Comments at 15-16.

"recognizes that the usage-sensitive CCLC constitutes an inefficient mechanism for recovering NTS costs."⁵⁴ The Joint Board correctly explains that because the cost of a loop is largely fixed, "[t]o provide proper economic signals, it would be preferable for prices related to the loop, such as the CCL charge, to be set in a manner that is consistent with the manner in which the loop's cost is incurred," namely on a flat-rate or non-usage-sensitive basis.⁵⁵ Indeed, basic economic theory teaches that alignment of prices and costs is necessary in order to achieve the optimal level of demand and the most efficient use of society's resources.⁵⁶ To the extent prices are not aligned with costs, as when a usage-sensitive pricing structure is used to recover a largely fixed (non-usage-sensitive) cost, the optimal, economically efficient level of end user demand for the service will be curtailed. Further, a usage-based CCLC flies in the face of the 1996 Act's policies mandating explicit and non-discriminatory universal service support.⁵⁷

The Joint Board's proposed remedy is that the Commission should permit ILECs to recover carrier common line costs from interexchange carriers ("IXCs") through a flat, per-line charge. The Joint Board suggests that additional efficiency would be promoted if, for example, "IXCs, in turn, can recover this charge as they see fit, including passing the flat charge *directly to the end user (whether or not the*

⁵⁴ Recommended Decision at ¶ 775.

⁵⁵ *Id.*

⁵⁶ See, e.g., Edwin Mansfield, *Microeconomics, Theory and Applications*, Second Edition, W.W. Norton & Company, Inc., 1975, pp. 200-202.

⁵⁷ 47 U.S.C. §§ 254(b)(4)(5); 254(d); Ad Hoc Comments at 25.

*end user generates any usage-based charges).*⁵⁸ The Joint Board proceeds to acknowledge that its proposal might encourage end users not to presubscribe to an interexchange carrier, and as a solution, proposes to allow "ILECs to collect the flat-rate charge that would otherwise be assessed against the PIC [primary interexchange carrier] from any customer who elects not to choose a PIC."⁵⁹

While the Joint Board's recommendation to implement a flat-rate CCLC would be a substantial improvement over the existing usage-sensitive CCLC, the foregoing recommendation is a second best solution, compared to the alternative of shifting revenue responsibility, if necessary, to the SLC.

As explained previously by Ad Hoc, implementing a flat-rate CCLC has fundamental problems vis-à-vis increasing the SLC: (1) it includes a subsidy flowing from users of interexchange services to users of local services; and (2) it requires potential competitors of the ILECs to subsidize the incumbents.⁶⁰ In addition, IXCs are not likely to pass through the flat-rate CCLC to their customers in a uniform across-the-board manner as ILECs do presently in recovering the SLC from their end-users.

Given the current market for interexchange services, IXCs are more likely to implement different rate structures and calling plans applicable to different classes of end users and absorb the loop recovery charge to varying degrees within those rate plans. In particular, IXCs may price their services in order to recover a greater portion of the flat-rate CCL charge up-front from customers with lower usage volumes or for whom there is less competition. In doing so, they will offset some of

⁵⁸ Recommended Decision at ¶ 776 (emphasis added).

⁵⁹ *Id.*

⁶⁰ Ad Hoc Reply Comments at 16.

the efficiency gains that would otherwise have resulted from the elimination of usage-sensitive CCL charges, had the charge been passed through directly and uniformly to end-users consistent with the causation of the loop cost. Ironically, the IXC pass-through of the flat-rate CCLC could work to the disadvantage of the very customer base the Joint Board seeks to protect by not increasing the SLC. The Joint Board should bear in mind that Congress's pro-competitive goals would not be served by arriving at such an inauspicious outcome.

Notably, the Joint Board explicitly *recommends* allowing ILECs to collect the flat-rate charge *directly from the end-user* in the case of customers who elect not to choose a PIC. This approach is the most economically sound for recovery of non-traffic sensitive ("NTS") loop costs because it effectively expands the SLC for this particular base of customers. Accordingly, it should be adopted not only as to those who do not choose a PIC, but rather applied uniformly to *all* customers.

In this regard, the Joint Board's tentative proposal to reduce the SLC is a step in the wrong direction. The Joint Board first recommends that "the current \$3.50 SLC cap for primary residential and single-line business lines should not be increased,"⁶¹ and then proposes a downward adjustment in the SLC cap if carrier contributions are based on both inter- and intrastate revenues.⁶²

These recommendations are contrary to the fundamental economic principle of cost causation, and to the Joint Board's own findings and recommendations concerning the CCL charge, which are based on that principle. Even a small decrease in the SLC could magnify existing distortions in the marketplace that have resulted from the failure to recover non-traffic sensitive loop

⁶¹ Recommended Decision at ¶ 769.

⁶² *Id.* at ¶ 772.

costs from the cost causer. Such distortions diminish the potential long-term benefits of a competitive market structure.

In proposing a flat-rate CCL charge that would be assessed on all end users -- even those that make no interexchange calls -- the Joint Board has effectively endorsed the economic concept underlying expansion of the SLC. Under the Joint Board's proposal, both the type of charge (flat rate) and the attribution of cost (to the end user) would be the same for the SLC and the CCLC. The only distinctions lay in the entity that would levy the charge -- the LEC in the case of the SLC, the IXC in the case of the CCLC -- and the way that entity would pass the charge on to the cost causer (*i.e.*, the end user). These distinctions, however, have significant economic efficiency and public policy implications.

B. Should The Need For Additional Loop Cost Recovery Exist, The Subscriber Line Charge Could Be Increased Significantly Without Adversely Harming Subscribers Or Subscribership Levels.

In CC Docket 96-98, the Commission fully embraced the concept of a forward-looking cost approach for determining the costs of the LECs' networks as consistent with the goals of ensuring efficient investment and encouraging competitive entry as contemplated by the Act.⁶³ Consistent with this finding, the Commission should calculate the appropriate level of loop cost recovery for the LECs based on an incremental forward-looking methodology, rather than the traditional embedded cost standard. Ad Hoc believes that the calculation of loop cost recovery on a forward-looking (efficient-cost) basis should result in a significant decrease in the level of revenue recovery required for LECs.

⁶³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (released August 8, 1996) ("Interconnection Order") at ¶ 705.

Accordingly, Ad Hoc believes it possible that elimination of the existing usage-sensitive CCL may be accomplished without the need for an offsetting increase in revenue recovery, either through implementation of a flat-rate CCLC, as the Joint Board recommends, or through an increase in the SLC, as Ad Hoc proposes above.

However, to the extent the Commission determines that additional revenue recovery is needed following elimination of the usage-sensitive CCLC, there is substantial evidence demonstrating that increases in the SLC can be implemented without adversely affecting subscribership levels.⁶⁴ The SLC cap was imposed in 1985. Given changes in the CPI over the past ten year period, there is significant room to increase the SLC without those increases exceeding the increase in prices experienced by consumers for other products and services in the economy as a whole. Given the evidence cited above establishing that increases in the SLC would not result in decreased levels of subscribership, and the demonstrated economic efficiency gains that would result from shifting revenue responsibility from the CCLC to the SLC, there is no sound economic or public policy rationale for repressing increases in the SLC to levels below those experienced by consumers with respect to other goods and services purchased over this time period.

Making this adjustment (through the year ending 1995) would bring the caps to \$5.30 and \$8.33 per month, respectively, for residential and multi-line businesses.⁶⁵ Merely increasing the SLC based on increases in the CPI would produce sufficient revenues to allow the Commission to immediately eliminate

⁶⁴ Ad Hoc Reply Comments at 15-16 (citing BellSouth Comments at 8; SWBT Comments at 4).

⁶⁵ Ad Hoc Reply Comments at 23, Data Appendix at A-10.

most, if not all, of the support presently collected through the CCLC.⁶⁶ However, as noted above, Ad Hoc does not believe increases of this magnitude should be needed where the Commission adopts a forward-looking cost approach.

In sum, adoption of the Joint Board's recommendation to implement a flat-rated CCLC would be a significant improvement over the existing usage-sensitive CCL charge. But as discussed above, the Joint Board's recommendation is an inferior solution to shifting revenue responsibility to the SLC. It offers no real advantage in terms of economic efficiency and threatens great costs in terms of foregone efficiency gains. The Joint Board should not sacrifice its pro-competitive goals solely to keep the SLC down.

V. THE COMMISSION SHOULD ADOPT THE JOINT BOARD'S RECOMMENDATION TO SEVER LONG TERM SUPPORT CHARGES FROM ACCESS CHARGES

The Joint Board recommends that the Long Term Support ("LTS") program be removed from the realm of access charges and instead be recovered through the universal service fund.⁶⁷ Ad Hoc urges the Commission to adopt this recommendation.

To date, the LTS Program has created subsidies flowing from low-cost LECs to high-cost LECs to enable high-cost LECs to reduce their CCLC. This relationship has resulted in artificially inflated access charges for low-cost LECs

⁶⁶ *Id.*

⁶⁷ Recommended Decision at ¶ 753.

-- a result that is incompatible with the 1996 Act's requirement that universal support be collected on a non-discriminatory basis.⁶⁸

The Joint Board advocates preserving payments comparable to LTS, because they reduce the loop costs that high cost LECs are forced to recover from IXC's through interstate access charges and thereby facilitate the flow of interexchange service into high cost areas.⁶⁹ By shifting LTS out of the access charge regime, as the Joint Board recommends, the Commission will ensure that LTS does not benefit some carriers while placing others at a competitive disadvantage, in contravention of the spirit of the 1996 Act.

VI. DISCOUNTS FOR SCHOOLS AND LIBRARIES SHOULD BE IMPLEMENTED IN A COST-EFFECTIVE MANNER, WITH SUPPORT FOR THOSE LIVING IN HIGH COST AREAS AND LOW INCOME CUSTOMERS RECEIVING TOP PRIORITY.

The Joint Board proposes a substantial set of discounts for schools and libraries that would apply to all telecommunications services, Internet access, and even inside wiring and other "internal connections."⁷⁰ As readily acknowledged by the Joint Board, "there is no historical record of how much it will likely cost to provide the support Congress directed us to afford to schools and libraries,"⁷¹ and the cost estimates that are available can provide only limited guidance in an "area where technologies are developing rapidly and demand is inherently difficult to predict."⁷² In recognition of these problems and the "statutory obligation to create

⁶⁸ 47 U.S.C. 254(b)(4); Recommended Decision at ¶ 767.

⁶⁹ Recommended Decision at ¶ 768.

a specific, predictable, and sufficient universal service support mechanism," the Joint Board recommends that the Commission establish an annual cap on discounts to schools and libraries in the amount of \$2.25 billion.⁷³

While Ad Hoc supports the concept of a cap as proposed by the Joint Board, the establishment of a cap does not fully address the fiscal concerns raised by the Joint Board's proposal. Based on the estimates identified in the Recommended Decision, costs associated with the Joint Board's proposal will exceed the recommended cap by 40% to 50% -- or approximately \$1 billion annually -- during the first four years of the program.⁷⁴ These cost estimates are admittedly imprecise, suggesting that an even larger gap could exist between the costs of implementing the Joint Board's proposal and the recommended cap.

In addition, the Recommended Decision contains little substantive discussion concerning the distribution and effectiveness of the \$2.25 billion in guaranteed funding. The Joint Board recommends that the Commission establish a "trigger mechanism, so that if expenditures in any year reach \$2 billion, rules of priority would come into effect," under which "only schools and libraries that are most economically disadvantaged and had not yet received discounts from the

⁷⁰ *Id.* at ¶ 477.

⁷¹ *Id.* at ¶ 552.

⁷² *Id.*

⁷³ *Id.* at ¶¶ 552, 556.

⁷⁴ This calculation is based on the Joint Board's estimate that the total cost of the communications services eligible for discounts would be in the range of \$3.1 to \$3.4 billion annually during the initial four year deployment period. *Id.* at ¶ 554.

universal service mechanism in the previous year would be granted guaranteed funds until the cap was reached.⁷⁵

This proposal does not, however, address such key issues as: how the first \$2 billion in guaranteed funding would be rationed among schools and libraries; whether schools and libraries would have a future entitlement to the recommended discounts once the cap is exceeded; what the estimated total "price tag" of the proposed program is expected to be; or whether overall the program is cost effective in terms of fulfilling the universal service obligations mandated under the Act and minimizing the impact on all consumers of telecommunications services.

Commissioner Chong expressed fiscal concerns in her separate statement accompanying the Recommended Decision. There, she questions the wisdom of expanding the services to which the proposed discounts would apply to include internal connections:

[T]he inclusion of internal connections will cause the fund to balloon to a level much higher than may be fiscally prudent, at the expense of all consumers of telecommunications services. . . . We need to carefully consider the impact on all consumers before we expand the scope of the funding obligation. In fulfilling our universal service obligations, we must be mindful of our concurrent obligation to ensure that telecommunications services are "available at just, reasonable, and affordable rates."⁷⁶

Commissioner Chong's concerns about the "substantial fiscal commitment of the program" recommended by the Joint Board and her appeal to the

⁷⁵ *Id* at ¶ 556.

⁷⁶ Recommended Decision, Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part at 6-7.

Commission to apply "fiscal prudence" at this juncture are compelling.⁷⁷ Ad Hoc agrees with Commissioner Chong's view that, consistent with the Act, the "first priority" should be for the provision of support for those living in high cost areas and for low income consumers.⁷⁸ The relative cost effectiveness of a targeted subsidy vis-à-vis a broadly applied one is well documented in economics and public policy applications. Economic theory teaches that maximization of total societal welfare requires that distributional adjustments among individuals be made in a manner that minimizes efficiency losses.⁷⁹ In terms of relevant public policy applications, the existing FCC High Cost Fund as well as federal and state "lifeline" assistance programs are prime examples of targeted support programs that serve defined classes of communities and individuals.⁸⁰ With targeting, the same degree of connectivity and ubiquity can be achieved at a small fraction of the cost. As a consequence, services that are burdened by the need to provide subsidy funding can be priced on a more economic, cost-driven basis, and new entrants will not be confronted with overly burdensome levels of support that could serve as barriers to entry. Ad Hoc urges the Commission carefully to consider the fiscal issues and concerns delineated above regarding the implementation of discounts for schools and libraries.

⁷⁷ *Id.* at 7.

⁷⁸ *Id.*

⁷⁹ See, e.g., Richard A. Musgrave and Peggy B. Musgrave, *Public Finance in Theory and Practice*, Second Edition, Chapter 4, "The Theory of Optimal Distribution," McGraw Hill, 1976, pp. 81-101.

⁸⁰ The FCC's High Cost Fund, for example, supports the provision of basic network connectivity in those areas in which unique conditions that tend to increase cost are present, including, for example, extremely low population density, difficult terrain, remote locations, etc. "Lifeline" assistance programs target low-income households.

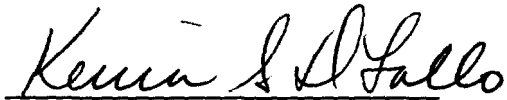
CONCLUSION

Ad Hoc urges the Commission to adopt the Joint Board's Recommended Decision, with the clarifications and recommendations discussed above. Adoption of the recommendations, as modified, should promote a targeted, competitively neutral universal service support program, free of regulatory interference with market forces, economic inefficiencies, and distorted pricing, thereby encouraging competitive entry into previously uncompetitive markets.

Respectfully submitted,

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Certificate of Service

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